

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 14, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:09MD-049

Maui

Grant of a 55-Year Term, Non-Exclusive Easement to the Association of Apartment Owners of Hale Ono Loa for Seawall Encroachment Purposes, Por. of Mahinahina, Lahaina, Maui, Tax Map Key: (2) 4-3-006: Seaward of 044.

APPLICANT:

Association of Apartment Owners of Hale Ono Loa, a Domestic Non-Profit Corporation.

LEGAL REFERENCE:

Section 171-13, 53(b) & (c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Mahinahina, Lahaina, Maui, identified by Tax Map Key: (2) 4-3-006: Seaward of 044, as shown on the attached map labeled Exhibit A.

AREA:

1,954 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

EXHIBITS:

Exhibit A- Tax Map

Exhibit B- October 1, 2007, shoreline survey map by Arthur Valencia.

Exhibit C- OCCL closure letter for unauthorized shoreline structure, dated January 21, 2009.

Exhibit D- OCCL Shoreline encroachment advisory letter, dated January 23, 2009.

Exhibit E- December 15, 2008, letter from Mr. Robert Tanaka regarding the subject seawall.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff observed the subject seawall and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states: Operations, repairs, or

maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR 11-200-8 (a)(1)], and Exemption Class No. 4, Minor alteration in the conditions of land, water, or vegetation."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>x</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u>__</u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

In January of 2009, the Office of Conservation and Coastal Lands (OCCL) conducted a review and assessment of the shoreline fronting the Hale Ono Loa property. It was discovered that portions of the existing seawall, inclusive of large concrete slabs, shaped in the form of sandbags, were located on state land, seaward of the subject property.

OCCL's investigation of the structure revealed that the bag-shaped concrete slabs were constructed as a coffer dam during the construction of the original seawall sometime before 1960. Based on information provided by Engineer Mr. Robert Tanaka, these slabs were originally temporary large sandbags that eventually hardened over time to form the existing concrete footing. A shoreline survey map dated October 7, 2007, by Arthur Valencia (labeled as Exhibit B) depicts a 1,954 sq. ft. portion of the seawall and footing to be encroaching onto state land. OCCL was also able to review a 1960 aerial photograph which shows what appears to be a seawall in the same location. Therefore, based on available information related to the seawall and footing, it appears that the improvements were initiated before the establishment of the Conservation District in 1964. As a result, DLNR did not consider the subject encroachment a Conservation District violation or require an after-the-fact Conservation District Use Application or Permit to cure this matter. OCCL further determined that after careful review and consideration, that allowing the encroachments to remain through the issuance of an easement would have minimal adverse impacts on natural resources, including beach resources and would provide for continued public access. Therefore, the OCCL had no objections to an easement request being processed.

Refer to Exhibit - C - January 21, 2009, OCCL Closure Letter for Unauthorized Shoreline Encroachments; &

Exhibit - D - OCCL Shoreline Encroachment letter dated January 23, 2009, for comments and recommendations regarding the subject shoreline encroachments.

AGENCY COMMENTS:

Requests for comments were submitted to the following agencies:

Agency	Comments
County of Maui – Current Planning	No comments provided
County of Maui – ZAED	No comment provided
Office of Conservation and Coastal Lands	Comments attached as Exhibits (C) and (D).
Office of Hawaiian Affairs	No comment provided

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-3-006:044, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above,

authorize the issuance of a 55-year term, non-exclusive easement to AOA of Hale Ono Loa covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

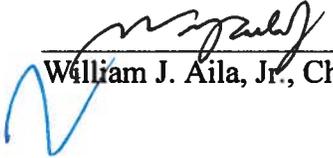
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-3-006:044, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 14, 2014

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of 55-Year Term, Non-Exclusive Easement to AOA of Hale Ono Loa for Seawall Purposes.

Project / Reference No.: PSF No. 09MD-049

Project Location: Mahinahina, Lahaina, Maui, Hawaii

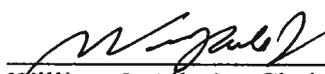
Project Description: Grant of a 55-Year Term, Non-Exclusive Easement for Seawall Encroachment Purposes

Chap. 343 Trigger(s): Use of State Lands in Conservation District (Shoreline)

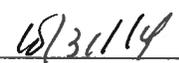
Exemption Class No. and Description: OCCL staff determined the subject seawall to have been built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343.

Consulted Parties: The Office of Conservation and Coastal Lands was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project.

Recommendation: It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



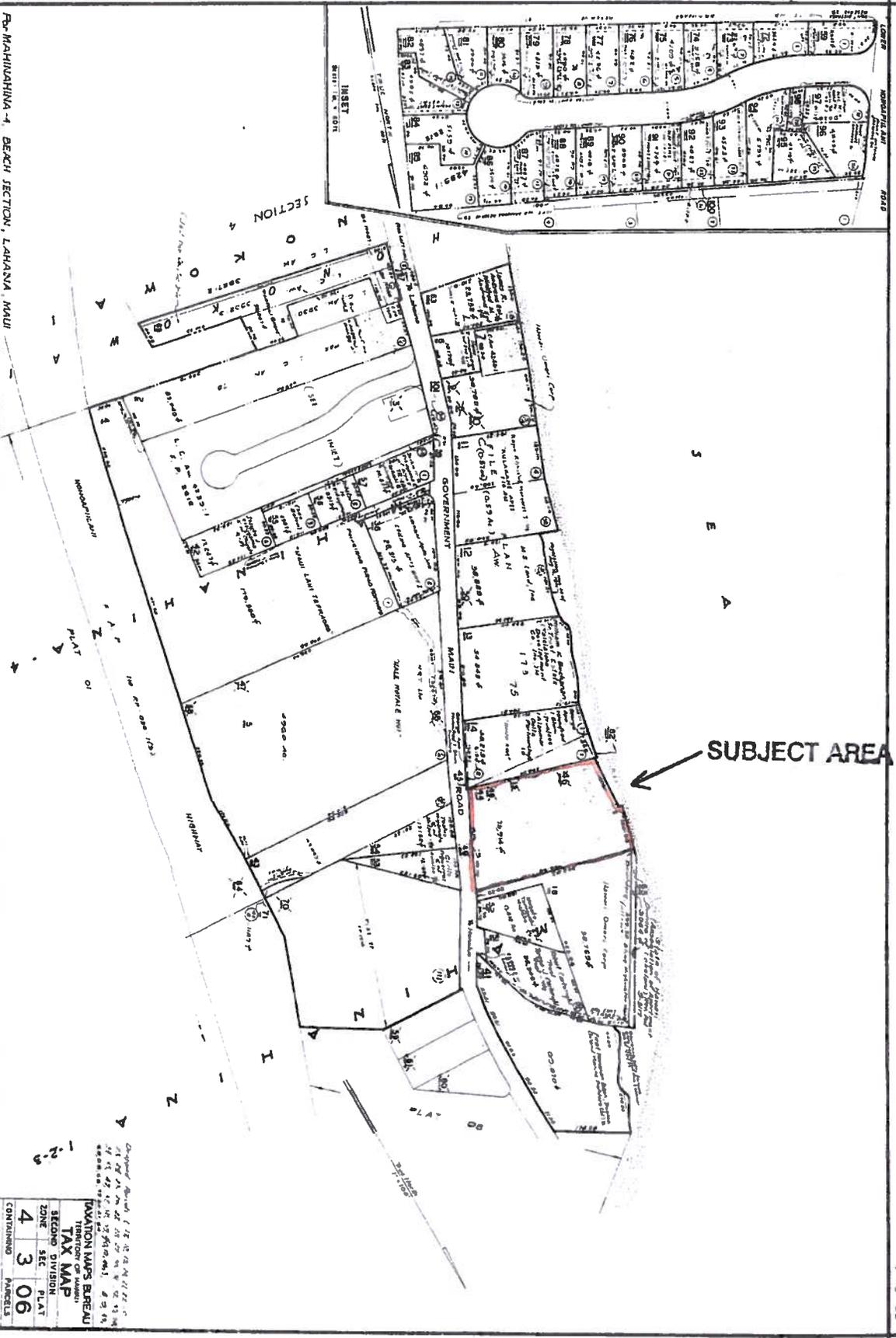
William J. Aila Jr., Chairperson



Date

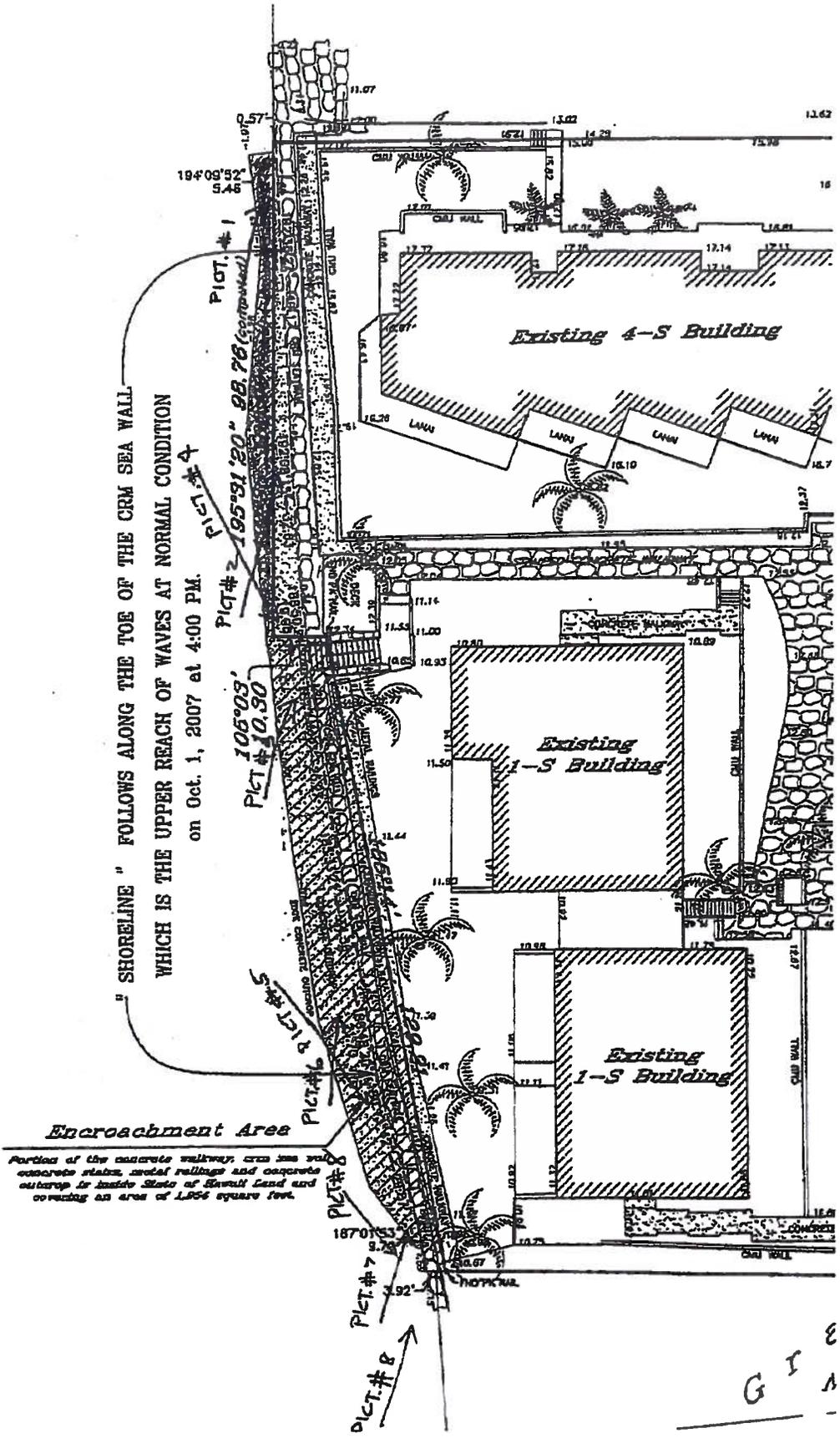
Dwg No 3838
 Dtd 11/11/52
 Source

For MAHIWAHINA - 4, BEACH SECTION, LAHANA, MAUI



Division Maps Bureau
 Tax Map
 Second Division
 Zone 4
 Section 3
 Plat 06
 Containing Parcels

"SHORELINE" FOLLOWS THE TOE OF THE CRM SEA WALL
 WHICH IS THE UPPER REACH OF WAVES AT NORMAL CONDITION
 on Oct. 1, 2007 at 4:00 PM.



Encroachment Area

Portion of the concrete walkway, area has no concrete slabs, metal railings and concrete outcrop in inside State of Hawaii Land and covering an area of 1,566 square feet.

G I E
 A

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
MAUI DISTRICT
LAND DIVISION

2009 JAN 26 PM 2:38

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Ref.: OCCL: DE

Violation: MA-08-41

January 21, 2009

JAN 21 2009

Richard Emery
AOA-Hale Ono Loa Condominiums

Lahaina, Maui 96761

SUBJECT: CLOSURE-Unauthorized Shoreline Structure (Concrete Bags) in the Conservation District at TMK (2) 4-3-06:44 Hale Ono Loa Condominium

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is in receipt of your January 2, 2009 letter regarding the subject shoreline structure. The OCCL has reviewed historical aerial photography and the submitted statements from Mr. Robert Tanaka P.E. Based on the information available to us, the Department of Land and Natural Resources (DLNR) has determined that:

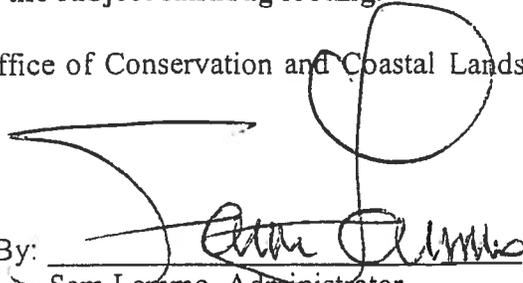
1. The subject structure, identified seaward of Tax Map Key: (2) 4-3-06:44 is in the Conservation District and is classified as *Resource* Subzone;
2. Based on stamped statements from Mr. Tanaka P.E. dated December 15, 2008 the subject structure is believed to have been constructed as a coffer dam during construction of the original seawall sometime before 1960;
3. The construction of the subject sandbags was intended to be temporary coffer dam but eventually hardened with time to form the existing concrete bags footing ;
4. Placement of the sandbags was conducted seaward of the subject premises on state land and provides direct benefit to the existing non-conforming seawall which is also partially encroaching on state land;
5. The subject material including a portion of the seawall is encroaching onto state lands and shall be resolved through the standard OCCL shoreline encroachment review process. The OCCL is in receipt of a May, 2008 submittal on your behalf for resolution of the subject encroachment(s). The OCCL is reviewing this request since the subject Conservation District violation has been resolved. If the OCCL deems retention of the subject material appropriate as requested you will be informed of this decision and informed on how to proceed with the request for an easement from the DLNR.

EXHIBIT " C "

Therefore based on the submitted information and no available information to the contrary, the Office of Conservation and Coastal Lands (OCCL) hereby closes Conservation District Violation MA-08-41 regarding the subject sandbag footing.

Please contact Dolan Eversole of the Office of Conservation and Coastal Lands at (808) 587-0377 if you have any questions.

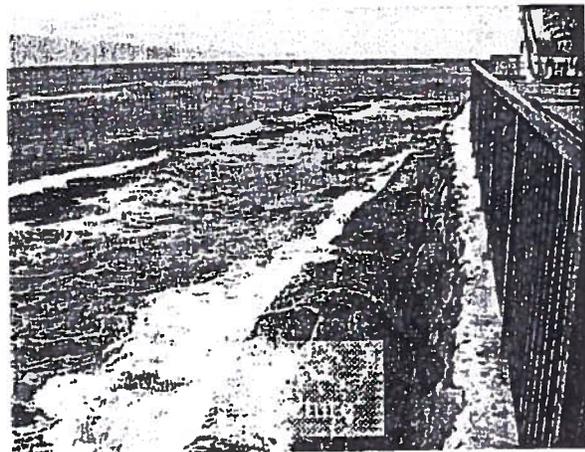
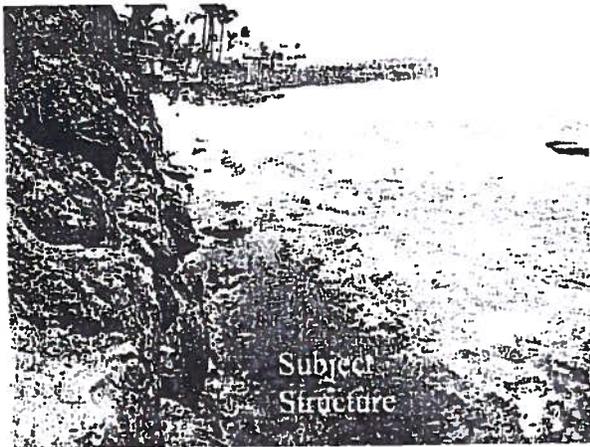
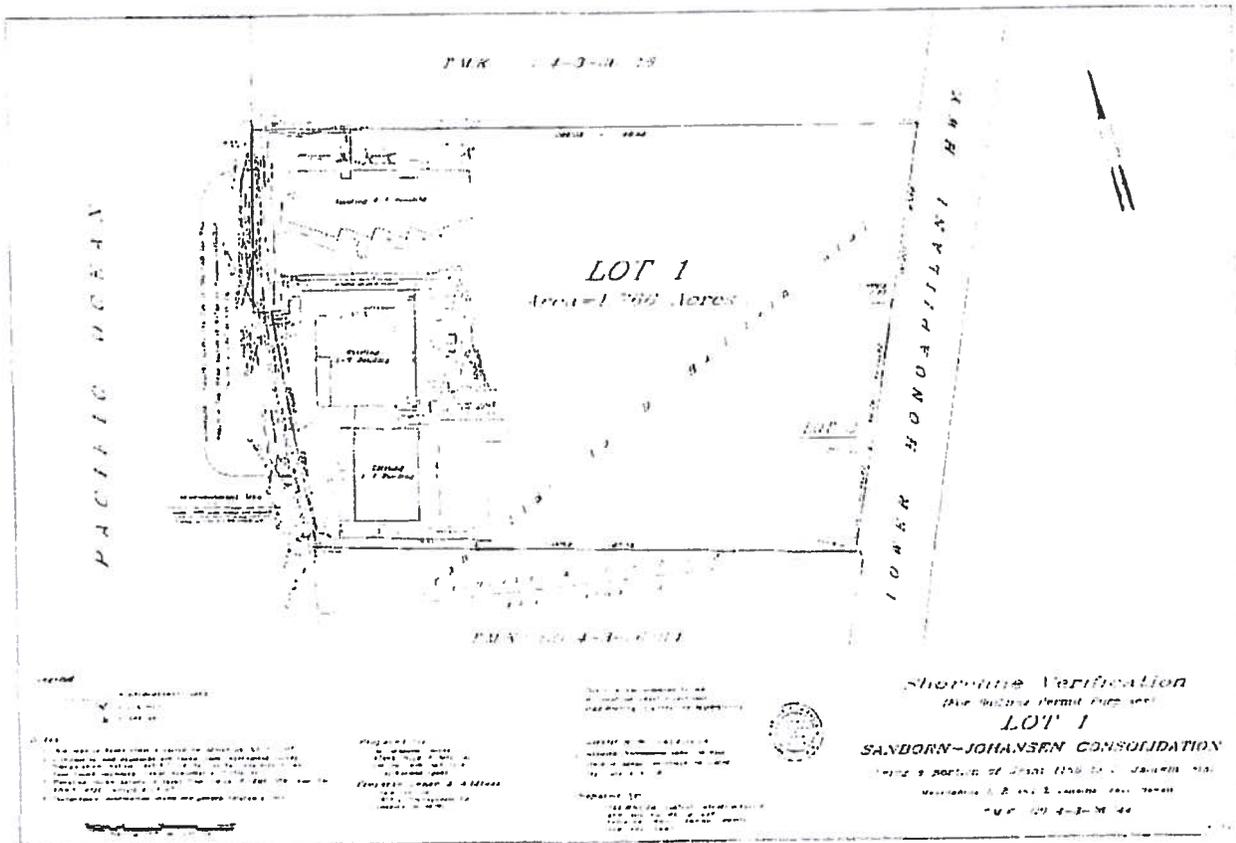
By:



Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

cc: Chairperson
Maui Board Member
MDLO
Maui County Planning Department- Thorne Abbott
Chris Porter Brooks, Tom, Porter & Quitquit 841 Bishop St. Honolulu Hi 96813
Benjamin Torigoe, AIA Century Center 40th Fl 1750 Kalakaua Ave. Honolulu Hi 96826-3756

Figure 1. Site Map and Ground Photos



LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
MAUI DISTRICT
LAND DIVISION

JAN 26 PM 2:38

LAURA H. THIELEN
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BOARD OF LAND AND NATURAL RESOURCES
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Ref.: OCCL: DE

Encroachment: MA-08-08

January 23, 2009

JAN 23 2009

Richard Emery
AOA-Hale Ono Loa Condominiums

Lahaina, Maui 96761

SUBJECT: Shoreline Encroachment (Seawall and Footing) at TMK (2) 4-3-06:44 Hale Ono
Loa Condominium

The Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources (DLNR) has reviewed the submitted documentation and researched shoreline maps for this case. We have reviewed the supplied shoreline encroachment information provided and researched historical shoreline information on the subject property to evaluate the environmental impact of granting an easement for the subject encroachment. The encroachment in question is (a portion of) a concrete seawall and concrete footing, located makai of the property line and within state-owned land and within the Conservation District.

The subject property is located in Honokowai, West Maui. A recent survey map by Aurthur Valencia (October 1, 2007) shows a 1,954 ft² portion of the seawall and footing encroaching onto state land (Figure 1). This was not a state certified shoreline but delineates the improvements and the encroaching area and is pending certification by the DLNR. According to the information provided to the DLNR, it is believed construction of the seawall began before 1960 and the subject sandbags footings were emplaced as a coffer dam as part of the construction of the original (non-conforming) seawall. The sandbags are now hardened and integrated into the existing seawall. A State Conservation District violation (MA-09-41) for the subject concrete footings was closed on January 21, 2009 due to subsequent information regarding the footing. A 1960 aerial photograph shows what appears to be a seawall located in the same location.

Based on the information available, it appears the improvements were initiated before the establishment of the Conservation District in 1964. As a consequence, DLNR does not consider the subject encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

EXHIBIT " D "

The Board of Land and Natural Resources (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the DLNR developed a "Shoreline Encroachment Information Sheet" that is intended to provide the DLNR with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of DLNR staff. Based on the information provided the DLNR has made the following determinations with regard to the subject improvements:

Surrounding Land Uses:

The surrounding uses are moderate density urban condominium and residential development. There is no public access right of ways in the immediate area.

Beach Resources:

The beach resources are poor to non-existent. Based on the BLNR decision-making criteria above, beach resources here are virtually non-existent. The region is heavily armored as a result of long-term chronic erosion. Small sandy pocket beaches exist only where accommodation space is available otherwise the entire area is armored or rocky. Most of the area consists of wet seawalls with limited access and nearshore recreational opportunities.

Public Access:

There is no direct public access to the shoreline at the site of the subject improvements and very limited lateral access. There are no existing public beach access easements identified in the immediate area.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the *entire* seawall may have a beneficial impact on beach resources by providing needed accommodation space for a beach to form. There is currently no beach fronting the subject structure. However, the perceived benefits of full removal would be countered by the removal of the only public access currently along the shoreline. In addition, since only a portion of the subject seawall is encroaching, partial removal would serve no benefit to any party and not improve beach resources in any meaningful way (Figure 1).

Public Access: Public access will be diminished if the subject encroachment is removed. The encroaching portion of the seawall and footing serve as an integral part of the whole structure that provides the only (public) along the shoreline.

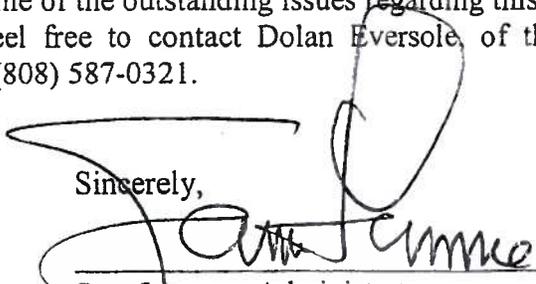
Affect on Adjacent Properties: Removal of the subject improvements would have a negative effect on the surrounding parcels due to potential for end flanking, scour and erosion of the dirt and fill behind the wall. Since only a portion of the structure is encroaching partial removal would only destabilize the seawall and may lead to eventual failure. The effect of removing the subject improvements would place an unnecessary risk to the seawall, the landward dwellings and the surrounding properties and not provide an appreciable gain in beach area.

Upon review and careful consideration of the information gathered on this case, OCCL staff have evaluated the above factors and determined that allowing the encroachments to remain through the issuance of an easement for the subject improvements would have minimal adverse impacts on natural resources, including beach resources and would provide for continued public access. **Therefore, the DLNR has no objections to an easement request being processed.**

Pursuant to Chapter 171 Hawaii Administrative Rules (HAR), you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a fine for the encroachment.

Please contact the DLNR, Land Division Maui District office at (808) 984-8103 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment.

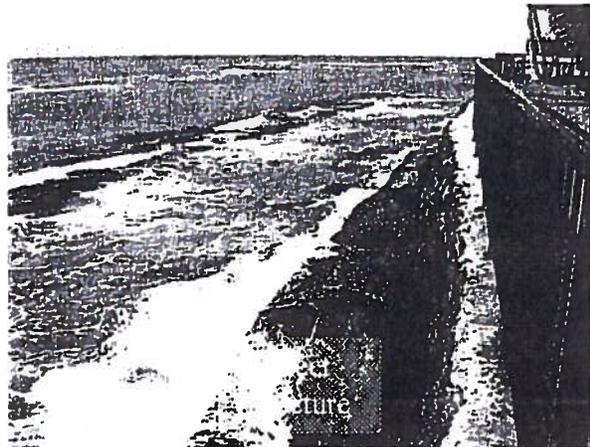
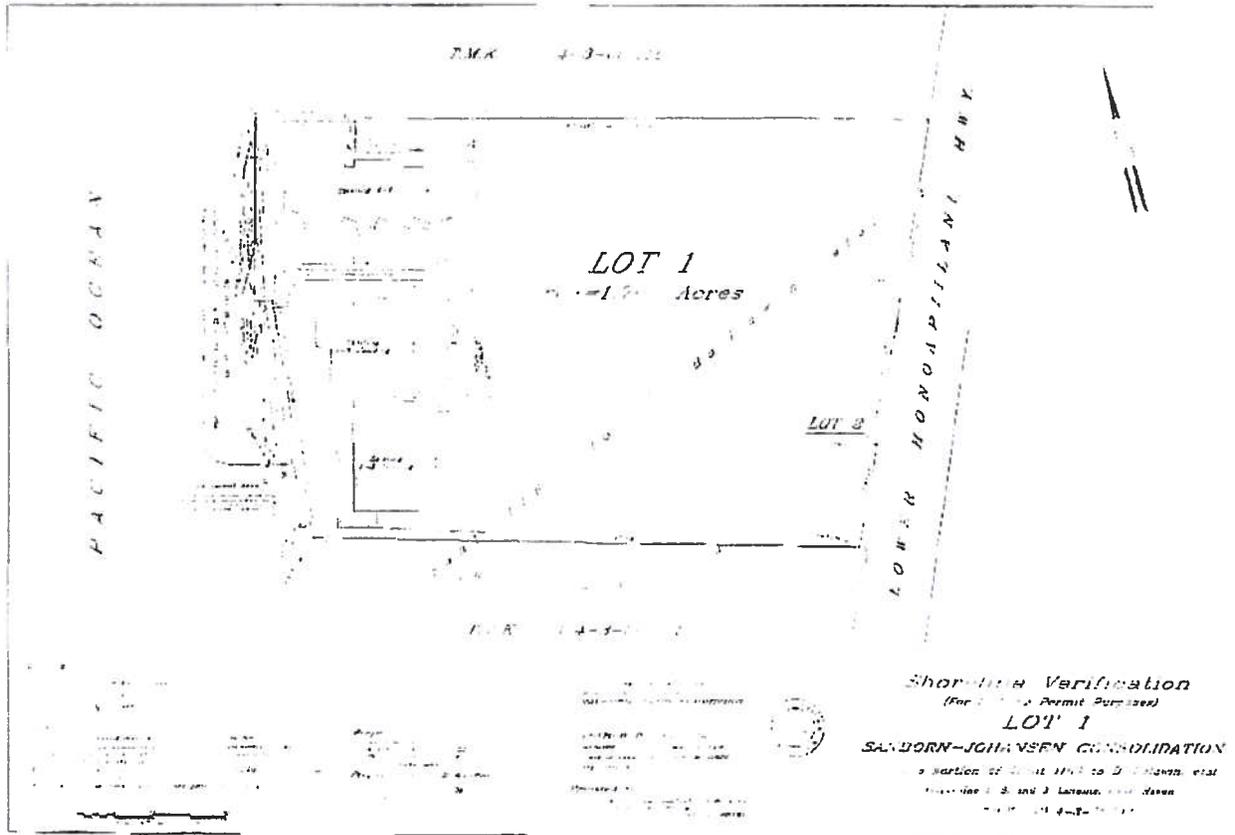
We hope this letter helps resolve some of the outstanding issues regarding this property. If you have any questions, please feel free to contact Dolan Eversole, of the Office of Conservation and Coastal Lands at (808) 587-0321.

Sincerely,


Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: Chairperson
Maui Board Member
MDLO
Maui County Planning Department- Thorne Abbott
Chris Porter Brooks, Tom, Porter & Quitquit 841 Bishop St. Honolulu Hi 96813
Benjamin Torigoe, AIA Century Center 40th Fl 1750 Kalakaua Ave. Honolulu Hi 96826-3756

Figure 1. Site Map and Ground Photos





CIVIL & STRUCTURAL ENGINEERING - LAND SURVEYING - CONSTRUCTION MANAGEMENT & INSPECTIONAL SERVICES

December 15, 2008

Brooks, Tom, Porter & Quitquit
841 Bishop Street
Davis Pacific Center, Suite 2125
Honolulu, HI 96813

Attention: Mr. Chris Porter
Attorney

Re: Hale Ono Loa Condominium
Seawall
TMK: (2) 4-3-06:44 & 48

Gentlemen:

The following are comments based upon my observation of Hale Ono Loa Condominium on November 13, 2008.

1. The existing boulder and CRM seawall appears to be in very good condition.
2. Evidence of sand bags appears fronting the footing of the seawall. The sand bags has solidified over the years. (Photos attached)
3. There is evidence of the sand bags (burlap bag) still in existence.
4. The sand bags and the seawall appear to be integrated together as one structure.
5. The sand bags are at the footing of the seawall.

The following are my comments and opinion in relation to the seawall.

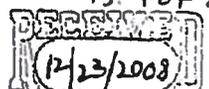
1. The Hale Ono Loa seawall has been in existence prior to 1978. Since, I did a shoreline certification of the adjoining south property seawall, we have records that Hale Ono Loa seawall was existing at that time. The adjoining property shoreline was certified by the Board of Land & Natural Resources on April 10, 1978.

Aerial photo of the site taken on March 22, 1960, reflects a seawall on the shoreline boundary of this property (photo attached herewith).

2. The sand bag structure fronting the Hale Ono Loa seawall was used as a coffer dam for protection during construction of the seawall foundation and left in place after the seawall was completed.

EXHIBIT " E "

pg. 1 of 2

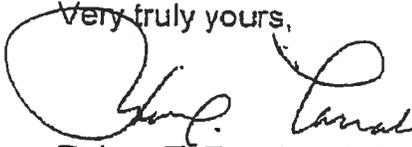


Brook, Tom, Porter & Quitquit
Attn: Mr. Chris Porter
Page - 2
December 15, 2008

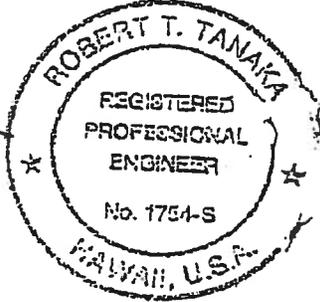
3. The sand bags left in place should have disintegrated and washed away but it solidified and become an integral part of the seawall.
4. According to sources (older people living in the area) the seawall was built in the 1950's.

Therefore, it is my professional opinion that the concrete structure fronting the existing seawall is sand bags which has solidified over the years and became a part of the spread footing and an integral part of the seawall structure.

Very truly yours,



Robert T. Tanaka, P.E.



RTT:sh
Att.

EXHIBIT " E "

Ps. 2 of 2